QUESTION PRESENTED

Whether, in the circumstances of this case, the Board properly ordered the employer to continue to recognize and bargain with the union notwithstanding its loss of employee support.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. 28a–29a.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

On January 2, 1968, the Board certified the Upholsterers' International Union of North America, AFL–CIO ("the Union"), as the representative of the production and maintenance employees at the Company's Hickory, North Carolina furniture plant (Pet. App. 3a). On January 3, the Union notified the Company of its certification and requested a bargaining conference. It also asked the Company to furnish the names of all employees in the bargaining unit, their hiring dates, job classifications, and hourly rates of pay, and information about any retirement and insurance programs, their cost to the Company, and the contributions made by the employees (Pet. App. 4a; A106).[1] On January 27, the Union repeated its request (Pet. App. 4a; A107–108). At the parties' first negotiating meeting on February 23, Union Representative Woodall reminded Company Attorney Abrams and Executive Vice-President Minotto that

[1] "A" references are to the appendix in the court below.

he had not received the information requested. Minotto responded, "We are working on this, it takes time." (Pet. App. 4a; A48–49.)

On March 21, the Union filed an unfair labor practice charge with the Board alleging, *inter alia,* that the Company was bargaining in bad faith and refusing to furnish necessary information (Pet. App. 1a–2a). On May 3 the Union received a list of the unit employees with their respective rates of pay. The Company, however, did not list the employees' job classifications, or the dates of hire for about half of them. It promised to send an updated list. (Pet. App. 4a–5a; A109–113, 144–159.) The Union wrote the Company on May 6, calling attention to the prior request for information and adding that the names and hourly rates were "practically useless" without the job classifications (Pet. App. 4a–5a; A114–115). On May 8, the Company sent another list, which was complete as to rates of pay and hiring dates, but still omitted job classifications or titles (Pet. App. 5a; A116–120).

The Company notified the Union on May 30 that it was unable to furnish job classifications or job titles, because it had "never classified the job nor assigned job titles to the various operating positions or stations in the Hy-Lan plant" (Pet. App. 5a; A121). The Union met further with Company Attorney Abrams on April 17, May 30, July 19, and September 10, 1968. At these meetings, it continued to ask without avail for information relating to the Company's insurance and pension programs. (Pet. App. 5a, 13a; A50–51.)

On October 23, at the outset of the hearing on the Union's unfair labor practice charge, the Company

proposed an informal settlement agreement under which it would correct an allegedly invalid no-solicitation rule, post a notice, and resume bargaining (Pet. App. 5a–6a; A51). The Union proposed a formal agreement that would include a court decree, but this was not acceptable to the Company (Pet. App. 5a; A51, 138–139). Pursuant to the Trial Examiner's suggestion, the hearing was adjourned so that the parties might negotiate further (Pet. App. 6a; A143).

Additional bargaining sessions were held on October 31, November 25, and December 13, 1968, and January 6, 1969 (Pet. App. 7a–8a, 22a; A52, 54, 71, 73). At the October 31 meeting, the Company's new chief negotiator and attorney, William Smith, agreed to provide the Union with information as to insurance and job classifications (Pet. App. 7a–8a; A52–53). The Union received a copy of the Company's insurance plan before the next (November 25) meeting, but no data as to its cost; this information was furnished orally at this meeting (Pet. App. 7a–8a; A58, 71, 91–92, 95–97). The Company also gave the Union a list of the 382 employees then in the unit, showing each employee's respective "department" and his "job classification," but not the dates of hire and rates of pay.[2] (Pet. App. 8a; A122–135.)

At the January 6 meeting, Smith pointed out that the unfair labor practice hearing was scheduled to resume on January 20. Union Negotiator Woodall

[2] One hundred and twenty-seven of the names on the November 25 list were not on the earlier May list (Pet. App. 8a; A122–135, 144–159), and hence the Union had neither the date of hire nor rate of pay for these employees.

stated that the matters to be discussed had been reduced to "the top issues," namely wages, checkoff, and the cost items (Pet. App. 8a–9a, 22a–23a; A59–60). Smith replied that, if the parties came to the table "as friends," it "would be helpful in working these top issues out"; he "suggested" that the Union "withdraw" its charge. The Union did so, and that proceeding was terminated. (Pet. App. 8a; A60.)

On February 13, 1969, after the Union had withdrawn its charge but before another meeting had occurred, 215 of the 382 employees then in the appropriate unit signed a petition indicating that they no longer wished to be represented by the Union (Pet. App. 10a). When the parties next met on February 20, Smith told Union negotiators that the Company had "reliable" information that a majority of the employees "no longer wish to be represented by your Union" (Pet. App. 10a; A60–61). Employee members of the negotiating committee replied that several employees had been induced to sign the petition by promises of wage increases or threats of reprisals. Smith declared that any such promises or threats, if made, were "strictly without any authority." (Pet. App. 10a; A75–77.) He refused to bargain further and suggested that the Union "file a new petition" (Pet. App. 10a; A61). Union Representative Woodall replied that the Union was still the certified agent and that it expected the Company to continue to bargain with it until it was decertified (*ibid.*). The Company left the meeting, and, on February 27, the Union filed the unfair labor practice charge on which the present proceeding is based. (Pet. App. 10a; A77.)

B. THE DECISIONS BELOW

Upholding its Trial Examiner, the Board found that the Company refused to furnish the Union with information "fundamental to the bargaining process": that these refusals "continued within the 6-month period preceding the filing of the instant charge, and also within the period when [the Company] was precluded from questioning the Union's majority status because the Union was in its initial year of certification"; and that, as a result, "the Union was in no position to engage in meaningful negotiations" on the wage and other issues which "were not settled prior to the date [February 20, 1969] the [Company] broke off negotiations." The Board concluded that by refusing to continue bargaining with the Union and by failing and refusing to furnish the Union essential information requested by it, the Company violated Sections 8(a) (5) and (1) of the Act. The Board held that in this circumstance, the Company "cannot be heard to question the Union's continued majority status." (Pet. App. 23a–24a.) The Board ordered the Company, *inter alia*, "to resume bargaining with the Union for a reasonable period of time without regard to fluctuations in the majority status of the Union" (Pet. App. 21a). The court of appeals enforced the Board's order *per curiam* (Pet. App. 25a).

ARGUMENT

1. Petitioner's contention that it was justified in withdrawing recognition from the Union on February 20, 1969, when it learned that a majority of the employees no longer desired the Union, rests on the

premise that the employee decision was not attributable to any unfair labor practice committed by the Company. The Board found, however, that the Company violated its bargaining obligation by refusing repeatedly the Union's requests for information which was necessary to enable it to engage in meaningful contract negotiations.[3] The resulting delay in successful bargaining was likely to induce employees to withdraw from the Union, since it appeared that their representative was not accomplishing anything. In the circumstances, the Board was justified in requiring the Company to recognize and bargain with the Union for an additional reasonable period of time, notwithstanding the loss of employee support. See *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 612–613. This factual issue does not warrant further review.

2. Contrary to petitioner's assertion (Pet. 12), the Board's decision here is not inconsistent with the six-

[3] Petitioner's contention concerning inconsistent findings (Pet. 16–18) is wide of the mark. The Board did not adopt the Trial Examiner's finding that the Company bargained in good faith from October 31, 1968, to the date recognition was withdrawn. It limited its holding as follows (Pet. App. 23a): "As the Trial Examiner found, the parties did meet and bargain on four occasions following October 23, 1968, and they made some progress toward a bargaining agreement. However, issues with respect to wages and economic benefits were not settled prior to the date the Respondent broke off negotiations, and the Union was in no position to engage in meaningful negotiations on these issues without the benefit of the data it had requested." This in no way conflicts with its ultimate finding, that petitioner violated its bargaining obligation.

month limitation bar of Section 10(b),[4] as construed in *Local Lodge No. 1424* v. *National Labor Relations Board* (*Bryan Mfg. Co.*), 362 U.S. 411. There, the only activity within the limitations period was the enforcement of a union security agreement, valid on its face. Since that activity, by itself, was lawful, and was impeached only by evidence of an event occurring long before the limitations period (showing that the union lacked majority status when it entered into the agreement), the Court held that the complaint was barred by Section 10(b). Here, on the other hand, the Company engaged in illegal conduct within the 10(b) period, by rejecting the Union's renewed requests for information within that period. As stated above, the Board's finding to this effect is amply supported.

Similarly, *National Labor Relations Board* v. *Electric Furnace Co.*, 327 F. 2d 373 (C.A. 6) (Pet. 14–16), does not aid petitioner. There, the court held that a rejection of the union's request for information was not a continuing violation "in the absence of further requests by the Union" within the 10(b) period (327 F. 2d at 376). Here the Union made such further requests.[5]

[4] Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made" (Pet. App. 29a). The charge which forms the basis of this proceeding was filed and served on February 27, 1969.

[5] The Board's extension of the certification year is neither a departure from established Board policy nor contrary to the law, as petitioner suggests (Pet. 19–21). Meaningful bargaining did not begin until late in 1968, and petitioner withdrew from

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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bargaining in February, 1969. In the circumstances here, the Board was justified in extending the original certification for a "reasonable" period of time.

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